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August 27, 1998

BY HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation in CC Docket No. 98-84

Dear Ms. Salas:

Transmitted herewith on behalf of McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), and pursuant to Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206(a) (1997), this is to provide an original and two copies of McLeodUSA's Supplemental Response in the above-referenced docket.

Should any further information be required with respect to this *ex parte* notice, please do not hesitate to contact us. As directed by the Public Notice in this matter, McLeodUSA has served copies of this written *ex parte* pleading on all parties to the proceeding. We would appreciate it if you would date-stamp the enclosed extra copy of this filing and return it with the messenger to acknowledge receipt by the Commission.

Sincerely,



Andrew D. Lipman
Richard M. Rindler

cc: Janice Myles
ITS

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FEDERAL COMMUNICATIONS COMMISSION
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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)

McLEODUSA TELECOMMUNICATIONS)
SERVICES, INC.)

CC Docket No. 98-84

Petition for Preemption of Nebraska Public)
Service Commission Decision Permitting)
Withdrawal of Centrex Plus Service by)
U S WEST Communications, Inc.)

**SUPPLEMENTAL RESPONSE OF
McLEODUSA TELECOMMUNICATIONS SERVICES, INC.**

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), by undersigned counsel and pursuant to Section 1.1206 of the Commission's Rules, submits this Supplemental Response in the above-captioned proceeding. McLeodUSA believes this *ex parte* response is warranted in light of the preposterous claims made by U S WEST Communications, Inc. ("U S WEST") in its August 21, 1998 *ex parte* presentation in this docket.

McLeodUSA objects to U S WEST's ill-reasoned attempt to characterize the Petition for Preemption filed by McLeodUSA as an effort "to have the FCC impose new standing rules on the Nebraska Supreme Court."¹ In fact, the Petition asks whether the decision by the Nebraska Public Service Commission ("PSC") to allow the withdrawal of Centrex is anticompetitive and inconsistent with *federal law*, not whether McLeodUSA has standing to challenge that withdrawal in a state

¹ U S WEST Supplemental Response, at 3.

forum under *state law*. U S WEST's assertions are no more than procedural games intended to distract this Commission from the underlying fact that McLeodUSA and other resellers are still prevented from entering the Nebraska local exchange market as a result of the approval of U S WEST's Centrex withdrawal. A favorable ruling from the Commission in the present case would not reverse the Nebraska Supreme Court's decision, nor would it provide McLeodUSA with new-found standing under *state law* to challenge yet again the Centrex withdrawal before the Nebraska PSC. A favorable ruling would merely confirm that regardless of their certification status, carriers can look to this Commission for relief under *federal law* whenever a state erects an anticompetitive barrier to entry in violation of section 253 of the Communications Act, as amended ("Act").²

In lieu of pursuing U S WEST's inapposite red herring, this Commission should refer back to the sound principles underlying McLeodUSA's Petition – those procompetitive provisions of federal law that the Nebraska Supreme Court and the Nebraska PSC have failed to examine in the context of U S WEST's withdrawal of Centrex service in that state. In its *Local Competition Order*, the Commission directed state commissions to "ensure that procedural mechanisms exist for processing complaints regarding incumbent LEC withdrawals of service."³ Even though sections 251(c)(4) and 251(b)(1) of the Act govern the availability of resold services,⁴ the Nebraska PSC

² 47 U.S.C. § 253 (1996). Indeed, it would certainly put the cart before the horse to find that in order to challenge a barrier to entry pursuant to section 253, a carrier must first be certificated in the state that has erected the barrier.

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, 15978 (1996) ("*Local Competition Order*"), at ¶ 968.

⁴ 47 U.S.C. §§ 251(c)(4) and (b)(1) (1996).

ignored these sections entirely and thereby evaded its obligation to engage in a thorough and thoughtful analysis of the anticompetitive implications of Centrex withdrawal. The facts presented in this proceeding demonstrate that, as a result of this substantive failure on the part of the Nebraska PSC, McLeodUSA and other resellers are effectively precluded from providing service in Nebraska today.⁵ Such a result is clearly inconsistent with the resale provisions of the Act, the intent of Congress,⁶ and Commission precedent.⁷

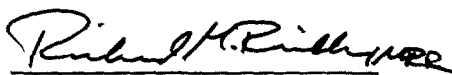
⁵ See, e.g., McLeodUSA Petition, at 2-3, 8-13 (describing the need for Centrex and the anticompetitive effect of its withdrawal); Reply of McLeodUSA, at 3-8 (summarizing the factual bases to support Commission action); Comments of Frontier Telemanagement, Inc., and Advanced Telecommunications, Inc, at 2 (noting their inability to enter the Nebraska local exchange market in the absence of Centrex resale); Comments of MCI, at 3-4 (emphasizing the importance of Centrex for competitive entry by resale); Comments of WorldCom, at 2-3 (emphasizing the importance of Centrex for competitive entry by resale); Comments of the Telecommunications Resellers Association, at 2-3 (citing a membership survey showing a dearth of reseller activity in Nebraska).

⁶ See Conf. Rep. No. 458, 104th Cong., 2nd Sess. 1 (1996) (announcing that the purpose of the 1996 amendments to the Act was "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans *by opening all markets to competition*") (emphasis added); S. Rep. No. 230, 104th Cong., 1st Sess. 5 (1995) (claiming that the 1996 amendments "preempt[] almost all State and local barriers to competing with the telephone companies upon enactment of the bill").

⁷ See *Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, CCB Pol 96-13, 96-14, 96-19, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3496 (1997), at ¶ 74 (finding that a state need not foreclose all means of competitive entry in order for a state action to constitute a barrier to entry).

McLeodUSA respectfully submits that the Commission should act pursuant to section 253 to preempt the Nebraska PSC's decision to let U S WEST's withdrawal of Centrex services take effect. Despite U S WEST's arguments to the contrary, such a ruling would have no effect whatsoever on the Nebraska Supreme Court's decision or any state standing rules. Instead, prompt and favorable action on McLeodUSA's Petition would simply ensure that the procompetitive resale provisions of the Act will be enforced, and allow competitors such as McLeodUSA to finally enter the Nebraska local exchange market through Centrex resale.

Respectfully submitted,



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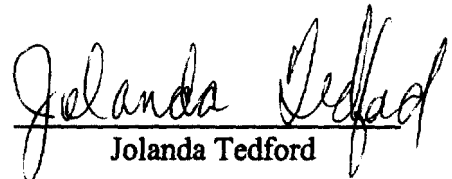
Counsel for
McLeodUSA Telecommunications Services, Inc.

Dated: August 27, 1998

CERTIFICATE OF SERVICE

I, Jolanda Tedford, hereby certify that a copy of the foregoing **SUPPLEMENTAL RESPONSE OF MCLEOD USA TELECOMMUNICATION SERVICES, INC., Docket No. 98-84** was sent to each of the following parties by U.S. mail, postage prepaid and as otherwise specified below on this 27th day of August, 1998.

SEE ATTACHED SERVICE LIST


Jolanda Tedford

SERVICE LIST FOR DOCKET NO. 98-84

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